IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.368 OF 2006

In

SUMMARY SUIT NO.1649 OF 1997

Kishor Anant Surve : Plaintiff

V/s.

Mr.Avinash V. Virkar : Defendant

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Mr.P.R.Kadam for the plaintiff.

None present for the defendant.

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**CORAM : S.A.BOBDE, J.**

DATE : JANUARY 29, 2007.

**P.C**.

1. The plaintiff has sued for recovery of an amount of Rs.1,32,406/- as set out in the plaint and the particulars of claim at exh.‘H’. The plaintiff has also claimed further interest on the principal amount of Rs.75,000/- at the rate of 21% from the date of the suit.

2. The suit is a summary suit. Summons for Judgement No.228 of 2000 came up for hearing before this Court on 30.4.2002. On that date, the Court dismissed the Summons for Judgement since the plaintiff did not remain present

and directed the defendant to file Written Statement within eight weeks. In spite of the time of eight weeks having expired long ago, the plaintiff points out that the defendant has not filed Written Statement. The plaintiff, therefore, prays for judgement under Order VIII Rule 10 of the C.P.C.

3. The suit claim is on the basis of loans of various amounts advanced to the defendant from time to time. According to the plaintiff, by way of part re-payment, the defendant gave nine cheques worth Rs.26,73,000/- on 26.9.1996. At that time, the outstanding principal amount of the loan was Rs.35,83,000/-. The plaintiff issued a receipt for the nine cheques dated 3.10.1996. In the receipt recorded in the letter dated 3.10.1996, he stated that the original promissory notes given by the defendant would be returned upon realisation of the cheques. That letter is at exh.‘B’ to the plaint.

4. According to the plaintiff, those cheques were dishonoured and even though the plaintiff made a demand by notice, the defendant did not pay the amount of the dishonoured cheques. The plaintiff also filed a criminal complaint under section 138 of the Negotiable Instruments Act.

5. On the adjourned date i.e. on 29.1.2007, the plaintiff has filed an affidavit in Notice of Motion no.369 of 2006 in Summary Suit No.2275 of 1997 stating that in the criminal case which the plaintiff has instituted under section 138 of the Negotiable Instruments Act, the defendant has been directed to deposit a fine of Rs.6 lakhs and he has deposited Rs.6 lakhs, pending decision on the revision filed in this Court. In the circumstances, it is appropriate to pass a decree in the sum of Rs.1,32,406/- with interest at the rate of 12% per annum from the date of the suit till realisation of the said sum.

6. Decree be drawn up accordingly.

7. Notice of Motion stands disposed of.

8. In view of the order passed in the Notice of Motion, the suit stands disposed of.

S.A. BOBDE, J.